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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6138
DATE COMPLAINT FILED: 11/26/08
DATE OF NOTIFICATION: 12/08/08
LAST RESPONSE RECEIVED: 02/06/09
DATE ACTIVATED: 03/25/09

STATUTE OF LIMITATION: 6/01/12 –
10/05/13

COMPLAINANT: Kwame Vidal, Campaign Manager, David
Scott for Congress

RESPONDENTS: Honeycutt for Congress and Scott
Mackenzie, in his official capacity as
treasurer
Andrew Honeycutt
Democrats for Good Government
David Knox

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 431(22)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441d(a)
2 U.S.C. § 441h
11 C.F.R. § 100.26
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: _____

I. INTRODUCTION

The Complaint in this matter alleges that Honeycutt for Congress ("HFC") and
Democrats for Good Government ("DGG") violated the Federal Election Campaign Act
of 1971, as amended ("the Act") in connection with two communications critical of

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1 Honeycutt's opponent, U.S. Representative David Scott. First, the Complaint alleges that
2 the communication titled "Corrupt" included a disclaimer stating that it was paid for by
3 DemocratsforGoodGovernment.com, even though an invoice and HFC disclosure report
4 indicate that HFC in fact paid for it. See Attachment 1. Next, the Complaint alleges that
5 HFC did not timely disclose its payment for the "Corrupt" communication. Further, the
6 Complaint alleges that HFC and DGG, through their agents, fraudulently misrepresented
7 themselves as speaking on behalf of the Democratic Party because the "Corrupt"
8 communication included a depiction of the Democratic Party donkey logo.

9 The Complaint also alleges that DGG's communication, "Voters," failed to
10 include the proper disclaimer, and alleges that the DGG met the thresholds for political
11 committee status in 2008 because it received and made undisclosed contributions and
12 expenditures, but failed to register and report as a political committee with the
13 Commission. See Attachment 2.

14 In its Response, HFC acknowledges that the Committee made a disbursement on
15 August 29, 2008, in the amount of \$1,385.75 to 48HourPrint.com. HFC also forwarded a
16 page from its amended 2008 October Quarterly Report that disclosed this disbursement.
17 The timing and amount of HFC's payment corresponds to an invoice for the "Corrupt"
18 communication included with the Complaint. See Attachment 3 to this Report and HFC
19 amended 2008 October Quarterly Report pp. 1200. HFC did not otherwise address the
20 "Corrupt" or "Voters" communications. DGG and David Knox did not respond to the

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11044304269

1 Complaint,¹ although Knox reportedly stated publicly that his efforts against Rep. Scott
2 are independent. *See* Ben Smith, *Scott Clears Away Much of Tax Debt*, THE ATLANTA
3 JOURNAL-CONSTITUTION, June 25, 2008 ("Ben Smith, June 25, 2008").

4 As set forth below, we recommend that the Commission find reason to believe
5 that Honeycutt for Congress and Scott Mackenzie, in his official capacity as treasurer,
6 and Andrew Honeycutt, the campaign chairman, knowingly and willfully violated
7 2 U.S.C. § 441d(a) because it appears that it authorized and paid for a communication
8 that identified another entity paid for it. In addition, because HFC did not disclose the
9 disbursement for the "Corrupt" communication on its initial 2008 October Quarterly
10 Report, we recommend that the Commission find reason to believe that Honeycutt for
11 Congress and Scott Mackenzie, in his official capacity as treasurer, violated 2 U.S.C.
12 § 434(b).

13 As to DGG and David Knox, because the "Voters" communication failed to
14 include a disclaimer and it was not disclosed as an independent expenditure, we
15 recommend that the Commission find reason to believe that Democrats for Good
16 Government and David Knox violated 2 U.S.C. §§ 441d(a) and 434(c). Because we do
17 not have more information regarding "Voters," there is insufficient information at this
18 time to determine whether there is reason to believe that DGG failed to register and
19 report with the Commission as a political committee. *See* 2 U.S.C. §§ 433 and 434.
20 Therefore, we make no recommendation on the issue at this time.

¹ We forwarded the Complaint to DGG and David Knox on two separate occasions at two different addresses. Both were returned by the USPS as "undeliverable as addressed unable to forward." Subsequently, on March 25, 2009, Mr. Knox filed a complaint against David Scott in MUR 6182 that listed a third address for Knox. On March 27, 2009, we forwarded a third notification to this new address. Finally, we forwarded the Complaint to DGG and David Knox by Federal Express on April 22, 2009. Federal Express records indicate that the Complaint was delivered on April 23.

1 In addition, we recommend that the Commission find no reason to believe the
2 allegation that Respondents fraudulently misrepresented themselves as acting on behalf
3 of the Democratic Party. See 2 U.S.C. § 441h(a).

4 Considering the seriousness of the apparent conduct reflected in our reason to
5 believe recommendations that some of the respondents may have knowingly and willfully
6 violated the Act, we recommend that the Commission investigate in order to ascertain
7 additional information regarding the creation and dissemination of both the "Corrupt"
8 and "Veterans" communications.

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Factual Background**

11 In the 2008 general election, Deborah T. Honeycutt was the Republican candidate
12 for Congress opposing the Democratic incumbent, Rep. David Scott, in the 13th
13 Congressional District of Georgia. HFC is the principal campaign committee for
14 Deborah T. Honeycutt, and her spouse, Andrew Honeycutt, is the Committee's campaign
15 chairman. See Response.

16 **1. Democrats for Good Government and David Knox**

17 DGG is an organization created by David Knox.
18 See <http://www.democratsforgoodgovernment.com>. DGG is not registered as a political
19 committee with the Commission or the Georgia State Ethics Commission, and is not
20 registered with the IRS as a section 527 organization. According to DGG's website, it is
21 "[t]he place to get the facts about Democrats who are really doing the work for
22 Democrats." See *id.* However, the entire content of the website appears to focus on

11044304271

1 material opposing a single candidate, Rep. Scott, including portions of local newspaper
2 articles that are highly critical of Rep. Scott. *See id.*

3 Knox is also the owner and operator of DK Intermedia, a website development
4 company. Both Knox and DK Intermedia were vendors to HFC for Deborah T.
5 Honeycutt's 2006 and 2008 congressional campaigns; Honeycutt faced Rep. Scott in both
6 general elections. The DK Intermedia website indicates it created an "informational site"
7 for Honeycutt's 2006 congressional campaign.² According to HFC's disclosure reports,
8 the Committee disbursed \$250 to David Knox on February 28 and on March 13, 2006 for
9 "website and photos," \$750 and \$350 on May 9 and July 7, 2006, respectively, for
10 "consulting-graphics/website maintenance," and \$350 and \$250 on July 31, 2006 and
11 February 6, 2007, respectively, for "consulting-graphics/website." HFC disbursed \$525
12 to DK Intermedia on May 7, 2008 for internet consulting.

13 The website for Democrats for Good Government contains a link to
14 www.voteoutdavidscott.com, a website apparently dedicated to the defeat of Rep. Scott
15 and reportedly created by David Knox. *See* Joel Hall, *Scott files FEC Charges against*
16 *Honeycutt's Campaign*, CLAYTON NEWS DAILY-ONLINE, October 22, 2008 ("Joel Hall,
17 October 22, 2008").³ The site begins with a heading "Georgia's Congressional 13th
18 District Corrupt Congressman," and continues with a cartoon figure identified as Rep.
19 Scott sitting at a desk surrounded by individuals identified as "Lobbyist" and piles of
20 cash with the U.S. Capitol in the background. The website directs the viewer to "Check
21 Him Out and Vote Him Out!!!" Several pages into the website is the cartoon depiction of

² The website states that "this site is no longer a part of this portfolio. There is no support for this candidate [sic]." (Emphasis in original). http://www.dkextra.com/portfolio/web_port.htm

³ The website link, www.voteoutdavidscott.com is now closed; however, the website can be accessed through the Democrats for Good Government website found at <http://www.democratsforgoodgovernment.com/voteoutdavidscott.com>.

1 Scott sitting on a mound of cash as included on the "Corrupt" communication. The
2 website concludes, "No Disclaimer Necessary – We only work for the government part-
3 time (ourselves the rest of the time.) Sponsored by Democrats for Good Government!"

4 **2. "Corrupt" Communication**

5 A copy of the "Corrupt" communication at issue is included with the Complaint
6 as Exhibit B and with this Report as Attachment 1. One side of the communication
7 begins with the heading "CORRUPT DAVID SCOTT," followed by a picture of Rep.
8 Scott and the statement "David Scott is CORRUPT!!!" The communication then refers
9 the reader to www.voteoutdavidscott.com. The communication also contains a depiction
10 of the Democratic Party donkey logo and the tagline, "Your Vote Counts for Change!"
11 The other side of the communication refers to Scott as "The Worst Black
12 Congressperson," and includes a cartoon depiction of Rep. Scott sitting on a mound of
13 cash with the U.S. Capitol in the background. Both sides of the communication contain a
14 disclaimer stating that it was paid for by "DemocratsForGoodGovernment.com." See
15 Attachment 1. Neither the Complaint nor HFC's Response provides information
16 regarding the distribution of this communication.

17 The Complaint also provided an invoice dated August 26, 2008 from
18 48HourPrint.com in the amount of \$1,385.75 for 25,000 double-sided "3.5 x 8.5 Rack
19 Cards – Corrupt." Attachment 3. The invoice was billed to "Andrew" at 160 Deer
20 Forest Trail, Fayetteville, Georgia, and includes a "blind shipping address" for "David" at
21 2326 Nicole Drive, Hampton, Georgia.⁴ The invoice "Ship to" addressee is David Knox
22 at an address in Jonesboro, Georgia. Public records indicate that Deborah and Andrew

⁴ Knox reportedly acknowledged previously renting at the blind shipping address in Hampton. See Joel Hall, October 22, 2008.

11044304273

1 Honeycutt are the owners of the Fayetteville address. HFC disclosed a \$1,385.75
2 payment to 48 Hour Print on August 29, 2008 for "Printing" that corresponds to the
3 invoice.

4 **3. "Voters" Communication**

5 A copy of the "Voters" communication at issue is included with the Complaint as
6 Exhibit C and with this Report as Attachment 2. Both sides of "Voters" are headed with
7 the same picture of Rep. Scott and the words: "Representative Scott's records indicate he
8 cares more about his wealth and comfort than about education, employment and health
9 needs of the citizens of Clayton, Cobb, DeKalb, Douglas, Henry, and South Fulton
10 Counties. Check his record and vote him out." The communication then refers the
11 reader to several websites.⁵ The other side of "Voters" below the header contains the
12 word "WHY" and lists purported reasons such as "Tax Evasion" and "Misuse of Official
13 Resources." Both sides of "Voters" include a tagline, "Time for a Change from David
14 Scott." Neither side of the communication contains a disclaimer stating who paid for the
15 communication. Finally, the bottom portion of each side refers the reader to
16 www.voteoutdavidscott.com and closes with "Democrats for Good Government." See
17 Attachment 2. There is no information available regarding the production, distribution
18 or costs associated with this communication.⁶

⁵ The "Voters" communication listed the following websites: <http://www.beyonddelay.org/node/317>;
http://www.gasparilliam.com/rep_david_scott/fixing_the_mess; and
<http://www.citizensforethics.org/node/30146>. The website links are no longer accessible.

⁶ Local media reported that a "flier" matching the description of the "Voters" communication appeared on mailboxes across the 13th Congressional District. See Ben Smith, June 25, 2008. This reported activity took place before the July 15, 2008 primary election. See *id.* Knox reportedly acknowledged providing "fliers" to campaign volunteers of Rep. Scott's primary opponent, Donzella James. See *id.* James reportedly denied knowledge of this activity, and is quoted as stating that she "did not put [the 'fliers'] out" but that she did not "have a problem with them being put out because people should be informed before they vote." See *id.*

B. Legal Analysis

1. Disclaimers

The Complaint alleges that the "Corrupt" and "Voters" communications did not include the required disclaimers. A political committee that makes a disbursement to finance a public communication must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Disclaimers are also required for public communications financed by any person that expressly advocates the election or defeat of a clearly identified candidate. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(2). The term "public communication" includes "mass mailings" and "any other general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. The Commission has determined that campaign literature "distributed to the general public at their place of residence...constitutes general public political advertising." See MUR 4741 (Mary Bono Committee) Factual and Legal Analysis (finding reason to believe that the Committee violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on campaign material left on doorsteps of residences).

The disclaimer for a communication that is paid for and authorized by a candidate, an authorized committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the

11044304275

1 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.
2 § 441d(a)(3). We now address the communications in question.

3 a. "Corrupt"

4 The Complaint alleges that HFC violated the Act's disclaimer provisions when it
5 paid for a communication, "Corrupt," that failed to state that the Committee paid for it.
6 The available information, including the Committee's Response and amended 2008
7 October Quarterly Report, and the invoice, see Attachment 3, indicates that HFC in fact
8 paid \$1,385.75 for 25,000 "Corrupt" "rack cards" on August 29, 2008. However, neither
9 the "Corrupt" communication itself, the Complaint, Response, nor other available
10 information indicates how the communication was disseminated. The Committee's
11 amended October Quarterly Report includes disbursements on September 5, 2008 to
12 Donald W. Allen II, in the amount of \$1,000.00 for consulting/canvassing and on
13 September 25, 2008 to Dan P. Young, in the amount of \$4,000 for consulting/canvassing,
14 which may be related to the dissemination of "Corrupt." If the communication qualifies
15 as a public communication, i.e., if it was mass mailed, see 11 C.F.R. § 100.27, or
16 otherwise qualifies as general public political advertising, the communication would need
17 to contain a disclaimer stating that HFC paid for and authorized the communication. See
18 2 U.S.C. § 441d(a)(1). Because the communication did not include such a disclaimer,
19 HFC may have violated 2 U.S.C. § 441d(a).

20 The available information further suggests that such a violation may have been
21 knowing and willful. The phrase knowing and willful indicates that "actions [were] taken
22 with full knowledge of all of the facts and recognition that the action is prohibited by
23 law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); see also *AFL-CIO v. FEC*, 628

11044304276

1 F.2d 97-98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful"
2 violation includes "such reckless disregard of the consequences as to be equivalent to a
3 knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts
4 before it that this standard was not met); *National Right to Work Comm. v. FEC*, 716 F.2d
5 1401, 1403 (D.C. Cir. 1983) (same). The available information indicates that the
6 Committee, through its agent Andrew Honeycutt, ordered the "Corrupt" communication,
7 and as indicated by the 48i4ourPrint.com invoice, provided the personal address of the
8 candidate and campaign chairman as the billing address. However, "Corrupt" includes a
9 disclaimer, "Paid for by DemocratsforGoodGovernment.com," and contains the same
10 headline, "The Worst Black Congressperson," and cartoon depiction of Rep. Scott as
11 included on the DGG website. Further, the blind shipping address listed on the invoice is
12 a reportedly acknowledged former address of David Knox, DGG's principal. *See*
13 Attachment 3; *see also* Joel Hall, October 22, 2008.⁷

14 HFC's apparent efforts to try to hide its involvement with the "Corrupt"
15 communication so that any recipients would not know that Andrew Honeycutt or the
16 Committee authorized and paid for "Corrupt" further supports a recommendation that
17 HFC and Andrew Honeycutt knowingly and willfully violated the Act. HFC's Response
18 does not address any relationship with DGG or David Knox; however, the available
19 information indicates an ongoing relationship between HFC and David Knox. *See supra*
20 pp. 5 ln. 3-12. In addition, the invoice at Attachment 3 further supports this ongoing
21 relationship because it lists the name "Andrew" and the billing address for the candidate

⁷ Knox reportedly denied involvement with the "Corrupt" communication, reportedly stating, "I am not connected to this, I didn't pay them for it, and they didn't pay me for it." *See* Joel Hall, October 22, 2008. Deborah T. Honeycutt reportedly denied any contact with DGG, stating, "myself, my campaign staff and my workers have nothing to do with Democrats for Good Government." *See id.*

1 and her spouse and campaign chairman, Andrew Honeycutt, as well as the name "David"
2 and the reported former address of David Knox. *See supra* fn. 4; *see also* p. 6 ln. 17-
3 p. 7 ln. 3. By paying for a communication with a disclaimer stating that a third-party
4 organization paid for it, HFC attempted to conceal its identity as the person that
5 authorized and paid for the 25,000 rack cards. Andrew Honeycutt and/or HFC attempted
6 to avoid any explicit connection between the "Corrupt" communication and the
7 Honeycutt campaign by stating that DGG paid for the "Corrupt" communication.⁸ Thus,
8 Respondents appear to have knowingly and willfully violated the Act. Accordingly, we
9 recommend that the Commission find reason to believe that Honeycutt for Congress and
10 Scott Mackenzie, in his official capacity as treasurer, knowingly and willfully violated
11 2 U.S.C. § 441d(a). In view of campaign chairman Andrew Honeycutt's personal
12 involvement with the "Corrupt" communication, demonstrated by the 48HourPrint.com
13 invoice, we also recommend that the Commission find reason to believe that Andrew
14 Honeycutt knowingly and willfully violated 2 U.S.C. § 441d(a). _____
15 _____

⁸ The candidate, political committee, and professional treasurer were experienced. Honeycutt was a candidate in 2006 as well as 2008 and HFC's treasurer, Scott Mackenzie, is an "FEC Compliance Officer" with BMW Direct, a Washington, D.C. political consulting firm. HFC's disclosure reports indicated total activity in amounts exceeding \$1.1 million and \$4.7 million for the 2006 and 2008 election cycles, respectively.

1 _____] Despite the limited
2 amount currently known to have been expended for the "Corrupt" communication, the
3 apparently knowing and willful conduct warrants an investigation into how this
4 communication was distributed, the total costs associated with the communication, and
5 respondents' involvement in this activity.

6 **b. "Voters"**

7 The Complaint also alleges that the "Voters" communication violated the Act's
8 disclaimer provisions. The communication itself states neither who paid for it nor
9 whether it was authorized by a candidate or candidate committee. See 2 U.S.C.
10 § 441d(a). HFC did not address the "Voters" communication in its Response; as noted,
11 David Knox and DGG have not responded to the Complaint. The dissemination of
12 "Voters" determines whether it is a public communication and thus required a disclaimer
13 under the Act. See *id.*; 11 C.F.R. §§ 110.11(a) and 100.26. Local media reported that a
14 "flier" matching a description of the "Voters" communication appeared on mailboxes
15 across Rep. Scott's congressional district. See Ben Smith, June 25, 2006. It thus appears
16 that "Voters" may constitute a public communication in the form of general public
17 political advertising. See 11 C.F.R. § 100.26; see also MUR 4741 (Mary Bono

11044304279

1 Scott with phrases such as "Voters vote him out," and "Time for a Change from David
2 Scott." See Attachment 2; 11 C.F.R. § 100.22(a). Thus, the communication should have
3 contained a disclaimer. See 2 U.S.C. § 441d(a).

4 As to what the "Voters" disclaimer should have stated, the available information
5 is limited as to whether DGG and Knox acted with the involvement of a candidate or
6 candidate committee in the payment, production, and distribution of "Voters." If DGG or
7 Knox acted without such involvement, "Voters" was not authorized by a candidate and
8 thus required by the Act to include the name, permanent street address, telephone number
9 or website address of the person that paid for the communication and state that the
10 communication was not authorized by any federal candidate or candidate's committee.
11 See 2 U.S.C. § 441d(a)(3).¹⁰ The line at the bottom of both sides of the "Voters" card,
12 "Democrats for Good Government," does not satisfy this requirement. Because "Voters"
13 appears to be a communication produced by DGG and David Knox and appears to lack
14 an appropriate disclaimer, we recommend that the Commission find reason to believe that
15 Democrats for Good Government and David Knox violated 2 U.S.C. § 441d(a). An
16 investigation is necessary to obtain additional information regarding the circumstances

¹⁰ If DGG or David Knox paid for "Voters" but a candidate or candidate's committee, or its agents, authorized the communication, "Voters" should have included a disclaimer pursuant to 2 U.S.C. § 441d(a)(2). The question then arises whether the "Voters" communication was coordinated with the candidate. If "Voters" met the criteria set forth in the Commission's regulations for coordinated communications, then DGG's or Knox's payment for the communication would constitute a potentially excessive in-kind contribution to the candidate committee. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. §§ 109.21 and 109.22. The criteria for a coordinated communication consists of three standards – payment by someone other than the candidate or her committee; satisfaction of one or more of the four content standards; and satisfaction of one or more of the six conduct standards. 11 C.F.R. § 109.21. The payment standard would be satisfied if DGG/Knox or another person other than the candidate committee paid for "Voters." The content standard is satisfied because the communication explicitly advocates the defeat of Rep. Scott, and the conduct standard of the coordination regulations would be satisfied if the communication was created at the request or suggestion, material involvement, or substantial discussion with the candidate, committee, or her agents. See 11 C.F.R. § 109.21(d). Since we have no information at this time regarding the costs of "Voters" or indicating that a candidate or candidate committee was involved with this communication, we make no recommendation at this time as to a possible resulting excessive contribution by DGG or David Knox.

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1 surrounding the distribution of the communication and the costs associated with the
2 communication.

3 **2. Reporting**

4 **a. Disclosure of Payment for "Corrupt" Communication**

5 HFC's disclosure reports must disclose all disbursements. See 2 U.S.C.

6 § 434(b)(4). HFC did not disclose the \$1,385.75 disbursement to 48HourPrint.com for
7 the "Corrupt" communication in its initial October Quarterly Report filed on October 15,
8 2008. The Complaint was initially filed on October 21, 2008, but was returned to the
9 Complainant to correct a form defect; the Complaint was properly submitted on
10 November 26, 2008. On October 22, 2008, the Committee filed an amended quarterly
11 report that disclosed the \$1,385.75 disbursement.¹¹ See 2 U.S.C. § 434(b). HFC thus
12 amended the report after the Complainant filed the Complaint. Because the disbursement
13 was not disclosed on HFC's original October Quarterly Report, we recommend that the
14 Commission find reason to believe that Honeycutt for Congress and Scott Mackenzie, in
15 his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose
16 the disbursement.

17 **b. Independent Expenditure Reporting for "Voters"**
18 **Communication**

19 If DGG or David Knox spent more than \$250 on "Voters," and the
20 communication was not coordinated with any candidate, DGG or Knox was required to
21 file an independent expenditure report with the Commission. See 2 U.S.C. § 434(c). An
22 independent expenditure is "an expenditure by a person expressly advocating the election
23 or defeat of a clearly identified candidate" and "that is not made in concert or cooperation

¹¹ The original October Quarterly Report was 47 pages. The amended report was 1275 pages.

1 with or at the request or suggestion of such candidate, the candidate's authorized political
2 committee, or their agents, or a political party committee or its agents." 2 U.S.C.
3 § 431(17); 11 C.F.R. § 100.16. Under the Act, every person who makes independent
4 expenditures in excess of \$250 must file a report that discloses information on its
5 expenditures and identify each person who made a contribution in excess of \$200 in a
6 calendar year and each person who gave more than \$200 for the purpose of furthering an
7 independent expenditure. 2 U.S.C. § 434(c). It is likely that the costs associated with the
8 production and distribution of "Voters" exceeded the \$250 independent expenditure
9 reporting threshold. For example, HFC paid \$1,385.75 for the production of the
10 "Corrupt" communication. Therefore, we recommend that the Commission find reason
11 to believe that Democrats for Good Government and David Knox violated 2 U.S.C.
12 § 434(c) and authorize an investigation to establish the costs associated with "Voters."¹²

13 3. DGG Political Committee Status

14 The Complaint alleges that in calendar year 2008 DGG received contributions and
15 made expenditures in excess of the registration and reporting requirements of the Act.
16 See 2 U.S.C. §§ 433 and 434. The Act defines a political committee as "any committee,
17 club, association, or other group of persons which receives contributions aggregating in
18 excess of \$1,000 during a calendar year or makes expenditures aggregating in excess of
19 \$1,000 during a calendar year." 2 U.S.C. § 431(4)(A). As set forth below, there is

¹² There is an additional independent expenditure reporting requirement at 2 U.S.C. § 434(g) (persons that make independent expenditures aggregating \$1,000 or more after the 20th day, but no more than 24 hours before the date of an election, must file a report within 24 hours with the Commission describing the expenditure). In view of the lack of information as to the amount DGG or David Knox spent on "Voters," as well as to the timing of its distribution (it may have been disseminated within 20 days before the July 15, 2008 primary election) we make no recommendation at this time as to whether section 434(g) reporting was also required.

1 insufficient information at this time to make a recommendation as to whether there is
2 reason to believe DGG has met the Act's threshold for political committee status.

3 The term "contribution" is defined to include "any gift, subscription, loan,
4 advance, or deposit of money or anything of value made by any person for the purpose of
5 influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). The Complaint
6 alleges that DGG received contributions surpassing the Act's registration requirements
7 but did not provide any information to support this claim. Complaint at 4-5.
8 Respondents DGG and David Knox did not respond to the Complaint and HFC's
9 response does not address this issue. Accordingly, the available information is
10 insufficient to conclude that DGG has satisfied the statutory threshold for political
11 committee status by receiving contributions for federal elections exceeding \$1,000. See
12 2 U.S.C. § 431(4)(A).

13 The term "expenditure" is defined to include "any purchase, payment,
14 distribution, loan, advance, deposit, or gift of money or anything of value, made by any
15 person for the purpose of influencing any election for Federal Office." 2 U.S.C.
16 § 431(9)(A)(i). In determining whether an organization has made an expenditure, the
17 Commission "analyzes whether expenditures for any of an organization's
18 communications made independently of a candidate constitute express advocacy either
19 under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b)."
20 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg.
21 5595, 5606 (Feb. 7, 2007). DGG's "Voters" communication contains express advocacy
22 under 11 C.F.R. § 100.22(a) because it refers to Rep. Scott by name and by picture and
23 contains language including "Vote Him Out," "Check his record and Vote Him Out," and

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1 "Time for a Change from David Scott," before it concludes with a reference to the
2 www.voteoutdavidscott.com website. See Attachment 2. The above language is
3 unmistakable, unambiguous, and about which reasonable minds could not differ as to
4 whether it encourages actions to defeat Rep. Scott. See 11 C.F.R. § 100.22(a). The
5 "Voters" communication clearly constitutes express advocacy, as defined in Section
6 100.22(a). For this reason, an analysis of the "Voters" communication under section
7 100.22(b) is unnecessary. Because the available information does not indicate the assets
8 associated with "Voters," and it is not clear whether DGG spent over \$1,000 on this
9 communication, we make no recommendation at this time as to whether there is reason to
10 believe that Democrats for Good Government failed to register and report as a political
11 committee in violation of 2 U.S.C. §§ 433 and 434.¹³

12 4. Alleged Fraudulent Misrepresentation

13 Finally, the Complaint alleges that, by including a depiction of a logo similar to
14 the logo of the Democratic Party on "Corrupt," Andrew Honeycutt, acting on behalf of
15 HFC, and David Knox, acting on behalf of DGG, fraudulently misrepresented that the
16 mailer was disseminated by the Democratic Party. Complaint at 5. The Act prohibits
17 federal candidates and their employees or agents from fraudulently misrepresenting

¹³ To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986). The Commission has long applied the Court's major purpose test in determining whether an organization is a "political committee" under the Act, and it interprets that test as limited to organizations whose major purpose is federal campaign activity. See Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007). DGG is not registered with the IRS as a section 527 organization. DGG promotes itself as "a first disseminating entity providing information on Democrats to fellow Democrats," see <http://www.democratsforgoodgovernment.com>, although the "Voters" and "Corrupt" communications as well as DGG's website have a singular purpose, advocating the defeat of Rep. David Scott. However, in view of our conclusion that available information does not indicate at this time whether or not DGG meets the statutory threshold for political committee status, we do not apply the "major purpose" analysis to DGG.

1 themselves, or any organization under their control, as speaking or otherwise acting on
2 behalf of any other candidate or political party on a matter which is damaging to such
3 other candidate or party. 2 U.S.C. § 441h(a).¹⁴ In past enforcement matters dealing with
4 fraudulent misrepresentation allegations, the Commission has focused its analysis on
5 whether the Respondent was acting like the "official" party organization. See MUR 4919
6 (Charles Ball for Congress); see also MUR 5444 (National Democratic Campaign
7 Comm.). In MUR 4919 (Ball), the Commission found reason to believe that the
8 Committee, Campaign Manager, and Finance Director knowingly and willfully violated
9 2 U.S.C. § 441h, and that the Committee treasurer violated 2 U.S.C. § 441h, when
10 Respondents, on behalf of the Republican candidate in the California's 10th
11 Congressional district, disseminated a communication within days of the general election
12 to Democratic voters in the district that was purportedly prepared by a fictitious local
13 party committee, the East Bay Democratic Committee, and signed by a Democratic
14 Congressman of a neighboring district that expressly advocated the defeat of the
15 Democratic incumbent. The communication's text suggested that committee was a
16 legitimate organization within the Democratic Party by including language such as
17 "Representing all Democrats in the East Bay." The communication urged the defeat of
18 the incumbent but did not include a disclaimer identifying who paid for it or whether it
19 was authorized by any candidate or committee.¹⁵

¹⁴ Section 441h(b) prohibits the fraudulent solicitation of funds, which seems to be further afield here where the available information does not indicate that DGG used the logo in connection with soliciting funds.

¹⁵ After an investigation, the Commission found probable cause to believe as to Charles Ball for Congress, its treasurer and its campaign manager and conciliated with these respondents.

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1 Unlike the communication in MUR 4919, in the instant matter, the "Corrupt"
2 communication cannot be construed as an instrument of an "official organization" within
3 the Democratic Party. Neither the complete name of the organization "Democrats for
4 Good Government" nor the use of the word "Democrat" is sufficient to conclude that
5 Respondents attempted to damage the Democratic Party. *See* 2 U.S.C.

6 § 441h(a). "Corrupt" does not contain text designed to make the communication appear
7 that the source of this communication was the Democratic Party. *See* Attachment 1.

8 Although Deborah T. Honeycutt was the Republican nominee in the 2008 general
9 election against Rep. Scott, the presence of the donkey logo on the "Corrupt"

10 communication does not rise to the level of a violation of section 441h(a). The donkey
11 logo, which is a generic symbol of the Democratic Party, is minimally displayed on the
12 bottom left portion of the "Corrupt" communication that expressly advocates the defeat
13 of Rep. Scott. *See* Attachment 1. The available information does not suggest that DGG
14 represents itself as an arm of the official Democratic Party structure, such as a district or
15 local party committee as defined at 11 C.F.R. § 100.14(b). Accordingly, we recommend
16 that the Commission find no reason to believe that Andrew Honeycutt, Honeycutt for
17 Congress and Scott MacIsaac, in his official capacity as treasurer, Democrats for Good
18 Government, and David Knox violated 2 U.S.C. § 441h(a).

19 **III. INVESTIGATION**

20 We recommend an investigation in order to resolve factual issues including who
21 was responsible for the creation of HFC's "Corrupt" communication, how the
22 communication was distributed and the total costs associated with this activity. Further,
23 we would seek to ascertain the exact costs incurred printing and distributing the "Voters"

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1 communication, including whether any candidate or candidate committee, such as HFC,
2 or its agents, paid for or authorized the "Voters" communication. Because formal
3 discovery may be necessary, particularly given Respondent Honeycutt for Congress'
4 possible knowing and willful violation of the Act, we recommend that the Commission
5 authorize the use of compulsory process, including the issuance of appropriate
6 interrogatories, document subpoenas, and deposition subpoenas, as necessary.

7 **IV. RECOMMENDATIONS**

- 8 1. Find reason to believe that Honeycutt for Congress and Scott Mackenzie,
9 in his official capacity as treasurer, knowing and willfully violated
10 2 U.S.C. § 441d(a).
11
- 12 2. Find reason to believe that Andrew Honeycutt knowing and willfully
13 violated 2 U.S.C. § 441d(a).
14
- 15 3. Find reason to believe that Democrats for Good Government and David
16 Knox violated 2 U.S.C. § 441d(a).
17
- 18 4. Find reason to believe that Honeycutt for Congress, and Scott Mackenzie,
19 in his official capacity as treasurer, violated 2 U.S.C. § 434(b).
20
- 21 5. Find reason to believe that Democrats for Good Government and David
22 Knox violated 2 U.S.C. § 454(c).
23
- 24 6. Find no reason to believe that Andrew Honeycutt, Honeycutt for Congress
25 and Scott Mackenzie, in his official capacity as treasurer, Democrats for
26 Good Government, or David Knox violated 2 U.S.C. § 441h(a).
27
- 28 7. Approve the attached Factual and Legal Analyses.
29
- 30 8. Authorize the use of compulsory process as to all respondents and
31 witnesses in this matter, including the issuance of appropriate
32 interrogatories, document subpoenas, and deposition subpoenas, as
33 necessary.

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1 9. Approve the appropriate letters.
2
3
4

5 Thomasenia P. Duncan
6 General Counsel

7 2-26-10
8
9 Date

10 BY: K. H. Guith
11 Kathleen M. Guith
12 Deputy Associate General Counsel
13 for Enforcement

14 Mark Allen
15 Mark Allen
16 Assistant General Counsel

17 Shana M. Broussard by MA
18 Shana M. Broussard
19 Attorney

20
21
22
23 Attachments:

- 24 1. "Corrupt" communication
25 2. "Voters" communication
26
27
28
29
30

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CORRUPT DAVID SCOTT



David Scott is
CORRUPT!!!

reports

**Atlanta Journal Constitution
DC Citizens Watch Group**

and

**Clayton County
Democrat Organization**

www.beyonddelay.org
www.voteoutdavidscott.com



Your Vote Counts for Change!

VoteOutDavidScott.com

Fold for by: DemocratsForGoodGovernment.com

SCOTT'S Re-election Strategy

The Worst black Congressperson



Rep. David Scott of GA District 13

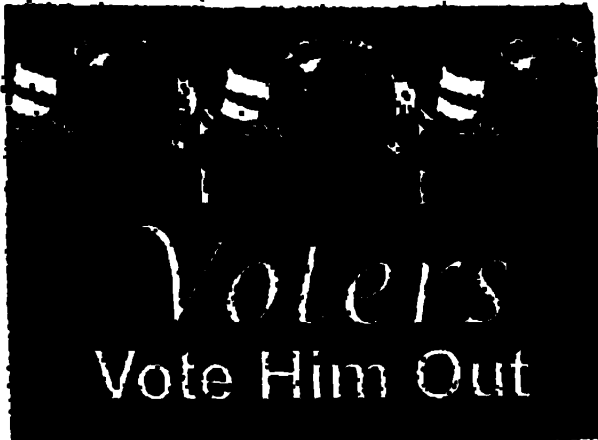
1. Has endorsements from "old line" Democrat Civil Rights Leaders who have sold their souls for the money.
2. Has voted against, or from in order to maintain current leadership power at the expense of trying to help black Democrat voters.

One supporter stated "Just Behind the Velvet, Scott is a Democrat and a Blame Heron, out for publicizing the Corruption Scandal! Most Democratic voters will not check Scott's congressional record."

Your Vote Counts for Change!

Out

Fold for by: Democrats GoodGovernment.com



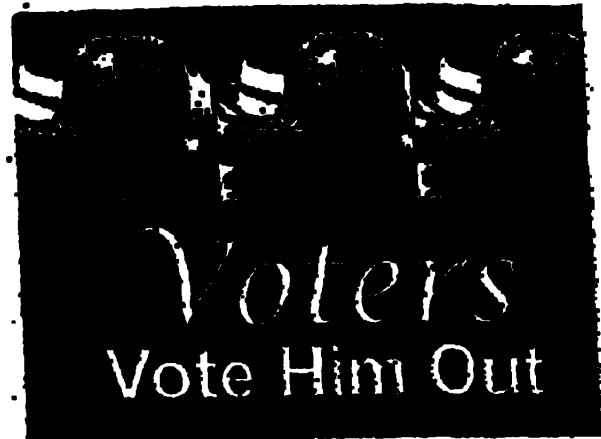
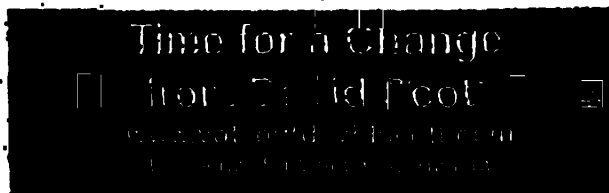
Representative Scott's records indicate he cares more about his wealth and comfort than about education, employment and health needs of the citizens of Clayton, Cobb, DeKalb, Douglas, Henry, and South Fulton Counties.

**Check his record and
Vote Him Out**

**[http://www.beyonddelay.org/
node/317](http://www.beyonddelay.org/node/317)**

**[http://www.goodwillhinton.com/
rep_david_scott/financial
_shenanigans](http://www.goodwillhinton.com/rep_david_scott/financial_shenanigans)**

**[http://www.citizenstorethics.org/
node/30148](http://www.citizenstorethics.org/node/30148)**



WHY

- Listed as a Corrupt Congressman

- Tax Evasion

- 40 tax liens

- \$150,000 IRS Lien

- Misuse of Official Resources

**- Violation of Federal and State
Tax Laws**

- For Illegal Amnesty

**- Funneled \$715,330.17 to family
from campaign**

- Under Federal Investigation

